

1 ANTHONY B. GORDON (S.B. NO. 108368)
GORDON & GORDON
2 A Professional Law Corporation
5550 Topanga Canyon Boulevard, Suite 200
3 Woodland Hills, California 91367-6478
Telephone: (818) 887-5155
4 Facsimile: (818) 887-5154

5 Attorneys for Defendants BLUE ROCK
CAPITAL, LTD., ESPRO INVESTMENTS,
6 LTD. and PRASANTH SEEVNARAYAN

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10

11 UNITED MEDICAL DEVICES, LLC,
12 a California limited liability company,
UNITED CONVENIENCE SUPPLY
13 LLC, a Delaware Limited Liability
Company,

14 Plaintiffs,

15 v.

16 BLUE ROCK CAPITAL, LTD., a
Mauritius Limited Liability Company;
17 ESPRO INVESTMENTS, LTD., a
Mauritius Limited Liability Company;
18 PRASANTH SEEVNARYAN, an
individual; and DOES 1-50,
19

20 Defendants.

Civil Action No. 2:16-cv-01255-PSG-SSx

**MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
PRASANTH SEEVNARAYAN AND
CANDICE SCHULTZ IN SUPPORT OF
MOTION TO QUASH SERVICE OF
SUMMONS AND COMPLAINT AND
TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

**[NOTICE OF MOTION AND MOTION
TO QUASH SERVICE OF SUMMONS
AND COMPLAINT AND TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION FILED
CONCURRENTLY HEREWITH]**

21 Date: April 18, 2016
Time: 1:30 p.m.
22 Ctrm: 880
Roybal Federal Building

23 Judge: Hon. Philip S. Gutierrez
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

On September 16, 2015, plaintiffs UNITED MEDICAL DEVICES, LLC (“UMD” and UNITED CONVENIENCE SUPPLY LLC (“UCS”) filed suit against defendants BLUE ROCK CAPITAL, LTD. (“BLUE ROCK”) and ESPRO INVESTMENTS, LTD. (“ESPRO”), both Mauritius limited liability corporations, and PRASANTH SEEVNARAYAN (“SEEVNARAYAN”), a South African resident, in the Superior Court of California, Los Angeles County, Santa Monica Courthouse. The complaint alleges two separate causes of action against defendants for breach of a written Distributorship Agreement under which BLUE ROCK and ESPRO had acquired the exclusive rights from Plaintiffs UMD and UCS to distributor Playboy products in Africa and India, for which Plaintiffs held the licensing rights.

On February 24, 2016, defendants removed the California Superior Court action to this Honorable Court based on diversity of citizenship.

The plaintiffs have studiously avoided attaching a copy of the Distribution Agreement to the complaint because SEEVNARAYAN is not a party to the Distribution Agreement, which he signed in his representative capacity as an officer of BLUE ROCK and ESPRO. (See SEEVNARYAN Declaration at ¶ 8.)

By this motion, defendant SEEVNARAYAN seeks the following relief: (1) an Order that the purported service of the summons and complaint be quashed on the ground that such service does not comply with Rule 4(f) of the Federal Rules of Civil Procedure and the Hague Convention to which both the United States and the Republic of South Africa are signatories, and (2) an Order that the action against him be dismissed for lack of personal jurisdiction.

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1 II.

2 MOTION TO QUASH SERVICE OF THE
3 SUMMONS AND COMPLAINT

4 A. THE PURPORTED SERVICE ON DEFENDANT SEEVNARAYAN IS
5 DEFECTIVE

6 No proof of service of the purported service of the summons and complaint on
7 SEEVNARAYAN has been filed, and for the reasons set forth below, any purported
8 service of process on SEEVNARAYAN is defective.

9 B. APPLICABLE LAW ON SERVICE OF PROCESS

10 The United States is a signatory to the Hague Convention on the Service Abroad of
11 Judicial and Extrajudicial Documents in Civil or Commercial Matters, which governs the
12 service of summons on persons in foreign countries. (See Request for Judicial Notice
13 filed concurrently herewith.) State and federal service rules for service in those countries
14 are pre-empted: “By virtue of the Supremacy Clause, United States Constitution, Article
15 VI, the Convention pre-empts inconsistent methods of service prescribed by state law in
16 all cases to which it applies.” See *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486
17 U.S. 694, 699 (1988). The Supreme Court pointed out that “the term ‘service of process’
18 has a well-established technical meaning. Service of process refers to a formal delivery of
19 documents that is legally sufficient to charge the defendant with notice of a pending
20 action.” *Id.*, at p. 700.

21 In order to effectively serve an individual in a foreign country such as South
22 Africa, the Plaintiffs are required to comply with Rule 4(f)(1) of the Federal Rules of Civil
23 Procedure, which provides the following in relevant part:

24 “(f) **Serving an Individual in a Foreign Country.** Unless federal law provides
25 otherwise, an individual, other than a minor, an incompetent person, or a
26 person whose waiver has been filed – may be served at a place not within
27 any judicial district of the United States:

28 (1) by any internationally agreed means of service that is reasonably
calculated to give notice, such as those authorized by the Hague
Convention on the Service Abroad of Judicial and Extrajudicial

Documents;”

As appears from the supporting Declaration of Candice Schultz, an attorney of the High Court of South Africa, the requirements for serving legal process issued by a court outside South Africa on a South African resident in South Africa, are set forth in Rule 4 of the Uniform Rules of Court, a copy of which is attached to her declaration as Exhibit “1.”

Rule 4(11) provides:

“Whenever the request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar of a provincial or local division in terms of subsection (2) of section thirty-three of the Act, the registrar shall transmit to the sheriff or a sheriff or any person appointed by a judge of the division concerned for service of such process or citation - (a) two copies of the process or citation to be served.” And,

Rule 4(12) provides:

“Service shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation (if any) thereof in accordance with the provisions of this rule.”

Also attached to Ms. Schultz’s declaration as Exhibit “2” is a copy of a pro forma “Certificate of Service of Foreign Process,” which is required to be filed with the Registrar or Clerk of the Regional/District Magistrate’s Court when effecting service of foreign process in South Africa. (See Schultz Declaration, ¶ 3.) As Plaintiffs have failed to provide any proof that these requirements have been complied with, the service of the summons and complaint is defective.

Even if a defendant received actual notice of the litigation, it would not cure defective service. There is no substantial compliance exception when it comes to service of process under Rule 4 of the Federal Rules of Federal Procedure. In *Mid-Continent Wood Products, Inc. v. Harris* 936 F.2d 297 (7th Cir. 1991), the Court held that it has long been recognized “that valid service of process is necessary in order to assert personal jurisdiction over a defendant,” and that “it is well recognized that a ‘defendant’s actual notice of the litigation ... is insufficient to satisfy Rule 4’s requirements.’ *Way v. Mueller Brass Company*, 840 F.2d 303, (5th Cir. 1988).” *Id.* at 300 and 301.

1 Accordingly, any attempted service of the summons and complaint that does not
2 comply with Rule 4 of the Federal Rules of Procedure should be quashed.

3 III.

4 MOTION TO DISMISS BASED ON COURT'S 5 LACK OF PERSONAL JURISDICTION

6 A. THE COURT LACKS PERSONAL JURISDICTION OVER 7 DEFENDANT SEEVNARAYAN

8 The complaint alleges that defendant SEEVNARAYAN is an individual residing in
9 Mauritius. As appears from his supporting declaration, he is a resident and citizen of
10 South Africa, and the CEO of the two Mauritius corporate defendants BLUE ROCK and
11 ESPRO, who had acquired the rights from UMD and UCS to sell and distribute Playboy
12 licensed products in India and Africa.

13 California courts may exercise jurisdiction over non-resident defendants pursuant
14 to California's "long-arm statute only when it is consistent with the United States and
15 California constitutions. See Civ. Proc. Code § 410.10. This means that a non-resident
16 defendant may only be subject to a state's jurisdiction if that defendant has such
17 'minimum contacts with that state so that the assertion of jurisdiction does not offend
18 traditional notions of fair play and substantial justice." See *International Shoe Co. v.*
19 *Washington*, 326 U.S. 310, 316 (1945). A defendant shall not be "haled into a jurisdiction
20 solely as the result of 'random,' 'fortuitous,' or 'attenuated' contacts.: See *Burger King*
21 *Corp. v. Rudzewicz*, 471 U.S. 462, 465 (1985) ("*Burger King*"). Thus in evaluating
22 whether jurisdiction is proper, the court must focus on the defendant's activities and
23 expectations alone in deciding whether to call it before a California court; the unilateral
24 actions or activities of third parties are irrelevant. See *Helicopteros Nacionales de*
25 *Colombia v. Hall*, 466 U.S. 408, 414 (1984) ("*Helicopteros Nacionales*").

26 There are two types of personal jurisdiction to which a non-resident defendant may
27 be subjected: general or specific. See *Hirsch v. Blue Cross, Blue Shield of Kansas City*,
28 800 F.2d 1474, 1477 (8th Cir. 1986); and see *Cornelison v. Charney* (1976) 16 Cal.3d 143,
147-148 .

1 General jurisdiction exists when a defendant is domiciled in the forum state or his
 2 activities there are substantial, continuous and systematic. See *Helicopteros Nacionales*.
 3 at 417.

4 Specific jurisdiction, however, arises where a defendant's contacts are not so
 5 extensive as to justify the exercise of general jurisdiction, but they nonetheless: (1)
 6 constitute a purposeful availment of the privilege of conducting activities in the forum; (2)
 7 the cause of action arises out of those activities; and (3) the exercise of jurisdiction is
 8 otherwise reasonable. *Burger King*, 471 U.S. at 472.

9 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, the court may decide
 10 the issue of personal jurisdiction on the basis of affidavits and documentary evidence
 11 submitted by the parties, or hold an evidentiary hearing regarding the matter. *Data Disc,*
 12 *Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Whatever procedure is
 13 used, Plaintiff bears the burden of proving the facts that warrant the exercise of either type
 14 of jurisdiction by a preponderance of the evidence. See *Magnecomp Corp. v. Athene Co.*,
 15 (1989) 209 Cal.App.3d 526, 533; *Ziegler v. Indian River Cnty*, 64 F.3d 470, 473 (9th Cir.
 16 1995).

17 Here, Plaintiffs have failed to meet their burden of pleading sufficient contacts
 18 between defendant SEEVNARYAN and California to justify this Court exercising either
 19 general or specific jurisdiction over him. To find general jurisdiction "is an exacting
 20 standard, as it should be, because a finding of general jurisdiction permits a defendant to
 21 be haled into court in the forum state to answer for any of its activities anywhere in the
 22 world." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004);
 23 See *Cornelison v. Charney* (1976) 16 Cal.3d 143 at 147 (finding no general jurisdiction,
 24 notwithstanding that defendant made 20 trips per year for seven years into California.)

25 In the instant case, SEEVNARYAN has no contact with the State of California. He
 26 does not own any property in this state, and has visited California only on a few occasions
 27 specifically related to the business relationship between UMC and UCS on the one hand,
 28 and BLUE ROCK and ESPRO on the other hand. (See SEEVNARYAN Declaration, ¶¶ 4

1 through 6,)

2 **B. DEFENDANT PRASANTH SEEVNARAYAN IS NOT A PARTY TO**
 3 **THE DISTRIBUTION AGREEMENT REFERRED TO IN THE**
 4 **COMPLAINT**

5 Remarkably, the Distribution Agreement upon which Plaintiffs base their claim is
 6 not attached to the complaint, which goes no further than alleging that “Defendants
 7 breached the Distribution Agreements,” without identifying which of the defendants
 8 breached the Distribution Agreement. (See Complaint, ¶¶ 17 and 29.)

9 The complaint does not allege that defendant SEEVNARAYAN was a party to the
 10 Distribution Agreement. As appears from the SEEVNARAYAN Declaration, he signed
 11 the Distribution in his representative capacity for and behalf of BLUE ROCK and
 12 ESPRO, respectively. (See SEEVNARAYAN Declaration, ¶¶ 8-11.) This does not mean
 13 that he voluntarily subjected himself to the jurisdiction of a California court.

14 Furthermore, based on the allegations in the complaint, the contractual obligations of
 15 BLUE ROCK and ESPRO were to be carried out expressly in countries other than the
 16 United States. The complaint alleges that “Defendants breached the Distribution
 17 Agreement by failing to satisfy the conditions set forth in Paragraph 16 of this
 18 Complaint,” which provides:

19 “The Distribution Agreement contains the representations, conditions, and
 20 promises by Defendants that they will, among other things:

- 21 • Have minimum net sales of US \$500,000 of Playboy Condoms in India per year;
- 22 • Purchase a minimum of US \$1,000,000 of Playboy Vapor from UCS for India per
 23 year;
- 24 • Purchase a minimum of US \$1,200,000 of Playboy Vapor from UCS for Africa
 25 per year;
- 26 • Purchase a minimum of 2 containers of Playboy Lubricants for Africa per year.”

27 (See Complaint, ¶ 16.)

28 Despite the fact that SEEVNARAYAN is not a party to the Distribution
 Agreement, Plaintiffs seek to embroil him in this litigation by dragging him all the way

1 from South Africa into a California court on a defectively pleaded alter ego liability
 2 claim based on alleged breach of contract claims. The complaint also does not allege any
 3 facts that show that the Distribution Agreement required BLUE ROCK, ESPRO or even
 4 SEEVNARAYAN to perform any act or acts in California, or to direct any activities
 5 towards California.

6 **C. THE COMPLAINT FAILS TO ALLEGE ANY FACTS SUPPORTING**
 7 **THE EXERCISE OF EITHER TYPE OF JURISDICTION OVER**
 8 **DEFENDANT SEEVNARAYAN**

9 The complaint fails to allege any facts that even remotely suggest that
 10 SEEVNARYAN has sufficient minimum contacts with California for this Court to
 11 exercise either general or specific jurisdiction over him, least of all that SEEVNARAYN
 12 signed the Distribution Agreement in California. As appears from the SEEVNARYAN
 13 Declaration, he signed the Distribution Agreement on behalf of BLUE ROCK and
 14 ESPRO in Durban, South Africa. (See SEEVNARYAN Declaration, ¶ 11.)
 15 Furthermore, the complaint fails to provide any information that shows a connection
 16 between SEEVNARYAN and California.

17 **D. THE COMPLAINT DISINGENUOUSLY ATTEMPTS TO PLEAD AN**
 18 **ALTER EGO THEORY BASED ON CONTRACTUAL CAUSES OF**
 19 **ACTION**

20 Without alleging fraud or wrongdoing, the complaint attempts to plead an alter ego
 21 theory based on a breach of contract action in conclusory terms unsupported by facts.
 22 (See Complaint, ¶¶ 3, 4, 6, and 8 to 12.)

23 In particular, ¶ 12 of the complaint alleges:

24 “Defendants are the alter egos of each other and/or are liable to Plaintiffs under the
 25 single enterprise doctrine. The companies are participating in a common business
 26 venture. The companies sell the same products. The companies have common
 27 owners and employees. The companies share business locations, telephone
 28 numbers, a website and email systems. Each company is merely the
 instrumentality, agency, conduit or adjunct of the others. There is such a unity of

1 interest and ownership between the defendant companies and their individual
 2 defendants that their separate personalities have ceased to exist. Further Plaintiffs
 3 are informed and believe and thereon allege that, if the acts of any one of the
 4 companies are treated as those of that company alone, an inequitable result will
 5 follow. [Emphasis added]”

6 The above allegation does not meet the pleading requirements for alter ego
 7 liability. As stated in *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th
 8 523, 539, “alter ego is an extreme remedy sparingly used.” In *Calvert v. Huckins*, 875 F.
 9 Supp. 674 (E.D. Cal. 1995), the court stated that two elements must be present in order to
 10 find that one entity is the alter ego of another. “First, the parent must control ‘the
 11 subsidiary to such a degree as to render the latter the mere instrumentality of the former.’
 12 (Citation omitted.) Second, because piercing the corporate veil is a remedy founded on
 13 principles of equity, there must be enough evidence to support a finding that failure to
 14 look past the corporate entity would sanction a fraud or promote injustice.”¹/ *Id.* at 678.
 15 “The fact that one shareholder controls a closely held corporation is not enough to support
 16 piercing the corporate veil.” *National Precast Crypt Co. v. Dy-Core of Pennsylvania, Inc.*
 17 785 F.Supp. 1186, 1192 (W.D.Pa. 1992).

18 “Underlying both these factors is a general presumption in favor of respecting the
 19 corporate entity. Disregarding the corporate entity is recognized as an extreme remedy,
 20 and ‘[c]ourts will pierce the corporate veil only in exceptional circumstances.’ [Citation
 21 omitted.] Reflecting this reluctance, courts hold plaintiffs who invoke the alter ego theory
 22 of personal jurisdiction to a slightly higher burden: ‘There is a presumption of corporate
 23 separateness that must be overcome by clear evidence that the parent in fact controls the
 24 activities of the subsidiary. [Citations omitted.]’ See *Calvert v. Huckins*, 875 F.Supp. at
 25 678. The fact that one entity has ownership interests in another, and that companies have
 26 interlocking directors and officers is insufficient to establish alter ego. “Courts have
 27

28 ¹ / The same principle applies equally to a shareholder.

1 repeatedly held that such factors do not justify piercing the corporate veil.” *Id.* at 679.

2 **E. PRASANTH SEEVNARAYAN HAS NOT PURPOSEFULLY**
 3 **DIRECTED ANY ACTIVITIES AT CALIFORNIA SO AS TO**
 4 **WARRANT THE IMPOSITION OF SPECIFIC JURISDICTION**
OVER HIM AND SUCH AN IMPOSITION WILL BE
FUNDAMENTALLY UNFAIR

5 Plaintiffs are unable to allege any facts that connect defendant SEEVNARYAN to
 6 California, and would support this Court’s exercise of specific jurisdiction over him. A
 7 court may exercise specific jurisdiction over a non-resident defendant *only* if it has been
 8 established that: (1) the defendant has purposefully directed his activities at the forum
 9 state; (2) the controversy is related to or arises out of the defendant’s contacts with the
 10 forum; and (3) the assertion of personal jurisdiction would comport with fair play and
 11 substantial justice. *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269. Plaintiffs
 12 bear the burden of proving the first two elements by a preponderance of the evidence, and,
 13 if proven, the burden shifts to the defendant to show that jurisdiction would not comport
 14 with fair play and substantial justice. *Schwarzenegger*, 374 F.3d at 802.

15 Here, Plaintiffs have failed to meet their initial burden of proving the first two
 16 elements by a preponderance of the evidence because they have not alleged any facts that
 17 establish that defendant SEEVNARYAN had purposefully directed his activities at the
 18 forum state. Nor have Plaintiffs alleged any facts that establish that this controversy is
 19 related to or arises out of defendant SEEVNARYAN’s contacts with the forum state. The
 20 complaint is based on the alleged breaches of a written Distribution Agreement entered
 21 into between the plaintiff entities UMC and UCS and the defendant entities BLUE ROCK
 22 and ESPRO, arising out of their alleged failure to (1) achieve minimum net sales of
 23 Playboy product of \$5000,000, in India per year; (2) purchase a minimum of \$1,000,000
 24 of Playboy products for India per year; (3) purchase a minimum of \$1,200,000 of Playboy
 25 Vapor for Africa per year; and (4) purchase a minimum of two containers of Playboy
 26 products for Africa per year. (See Complaint, ¶ 16.) Significantly, as the Distribution
 27 Agreement required BLUE ROCK and ESPRO to perform outside California, specifically
 28 in India and Africa, none of defendant SEEVNARYAN’s activities were directed towards

1 California.

2 Furthermore, the exercise of jurisdiction would still be inappropriate because it is
 3 not reasonable and does not comport with "traditional notions of fair play and substantial
 4 justice." *World-Wide Volkswagen Corp., v. Woodson* , 444 U.S. 286 (1980). Given that
 5 SEEVNARYAN is not a citizen of California, has not conducted any business in
 6 California, and has not directed any activity or activities towards California, he would be
 7 greatly burdened and inconvenienced, including being forced to incur substantial legal
 8 fees and costs to defend himself against the spurious claims brought against him in in his
 9 personal capacity in a California court.


10 IV.

11 CONCLUSION

12 Accordingly, for these reasons, the Court is respectfully requested to quash
 13 Plaintiffs' attempted service of the summons and complaint on defendant
 14 SEEVNARYAN, and to dismiss the Plaintiffs' action against him based on the Court's
 15 lack of personal jurisdiction.

16 GORDON & GORDON
 17 A Professional Law Corporation

18
 19 Dated: February 28, 2016

20 By: 
 21 ANTHONY B. GORDON
 22 Attorney for PRASANTH
 23 SEEVNARAYAN
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 28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 5550 Topanga Canyon Boulevard, Suite 200, Woodland Hills, California 91367-6478.

On February 29, 2016, I served the foregoing documents described as:

MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF PRASANTH SEEVNARAYAN AND CANDICE SCHULTZ IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT AND TO DISMISS FOR LACK OF PERSONAL JURISDICTION

[NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT AND TO DISMISS FOR LACK OF PERSONAL JURISDICTION FILED CONCURRENTLY HEREWITH]

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael J. Perry, Esq.
4640 Admiralty Way, Suite 500
Marina del Rey, California 90292

Peter W. Ross
Brown George Ross LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 29, 2016, at Woodland Hills, California

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



Linda Gordon